Remarks/Arguments:

The above Amendments and these Remarks are in reply to the Office Action mailed March 16, 2005.

The Examiner is thanked for the performance of a thorough search.

Claims 1 - 20 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 1 - 20. The present Response amends claims 7 and 10 – 13 and 16 - 17 to correct obvious typographical errors, and claims 1, 3, 4, 8, 10, 14, 16, 18 and 20 to explicitly recite that which was already implied. No new matter is added. Reconsideration of the rejections is requested.

Objections to the claims

In items 4 - 7 on pages 2 – 3, the Office Action objected to claims 11 – 13 for various informalities. Applicant respectfully submits that these objections have been rendered moot by amendments to these claims made herein.

Rejections under 35 U.S.C. § 112

In items 9 - 13 on pages 3 – 4, the Office Action rejected claims 7, 12 and 13 under 35 U.S.C. 112 second paragraph. Applicant disagrees and would traverse but elects instead to amend these claims 7, 12 and 13 to obviate the rejections. Accordingly, these rejections are respectfully now rendered moot.

Rejections under 35 U.S.C. § 102

In items 15 - 25, beginning on page 4, the Office Action rejected claims 1 - 5, 8, 9, 14, 15 and 18 - 20 under 35 USC 102(e) as being anticipated by US Patent 6,816,907 to Mei *et al.* (hereinafter "Mei"). Applicant respectfully traverses.

Claim 1

Amended claim 1 recites:

1. (Currently Amended) A system for routing network traffic, comprising:

a content traffic governor (CTG);

a content switch;

a data source to store customer data comprising data exchanged with a customer;

an analysis means that analyzes customer data supplied from the data source to determine at least one relationship in the customer data; and

wherein the content traffic governor (CTG), in conjunction with the analysis means, dynamically determines traffic routing rules at the content switch (CS) for routing network traffic based at least in part upon the at least one relationship in the customer data dynamically determined by the analysis means.

Mei fails to render the embodiment of amended claim 1 unpatentable at least for failing to teach, suggest or otherwise render obvious the recited "dynamically determines traffic routing rules at the content switch (CS) for routing network traffic based at least in part upon the at least one relationship in the customer data dynamically determined by the analysis means" recited by amended claim 1. Applicant's claimed embodiments contemplate "***collecting customer data from ... data sources and computing the clients' profile values based on enterprise's business rules...***" (see, e.g., Specification, page 8:lines 12 – 17; FIG. 1:118). Mei instead teaches routing traffic according to three statically defined service levels statically assigned to users. Mei REQUIRES use of a table based scheme comprising service level look up tables (Mei, FIG. 1:301, 302) and requirement table (Mei, FIG. 1: 501). Mei must rely on outside content providers to supply their own tables (Mei, Abstract, line 11 and following). Thus, Mei's approach not only fails to determine their service levels based upon gathered data, but Mei's approach is necessarily static, in that Mei cannot update the service levels based upon newly collected data. Accordingly, not only does Mei's approach fail to teach the foregoing recited claim limitations, Mei actually teaches away.

Because Mei's approach uses content provider supplied service level tables, Mei must rely upon the content providers to supply new tables in order for service levels to change. Thus, Mei's approach cannot be used to dynamically determine service levels based upon relationships in the data because Mei cannot update the service levels without the content providers. In other words, Mei's use of static information in service level tables teaches away from applicant's recited invention as to its process.

Further, even if Mei were even able to be combined with a mechanism for "dynamically

determines traffic routing rules at the content switch (CS) for routing network traffic based at least in part upon the at least one relationship in the customer data dynamically determined by the analysis means," because Mei necessarily REQUIRES that the service level data be incorporated in data tables by service providers, any argued addition of such a mechanism for determining traffic routing rules dynamically from data exchanged with the customer would change Mei's principle of operation (see MPEP § 2143.01).

The Office action's suggestion that Mei could be combined with any other art, or even the items for which 'Official Notice' was taken, requires impermissible hindsight, since any addition of a mechanism that "dynamically determines traffic routing rules at the content switch (CS) for routing network traffic based at least in part upon the at least one relationship in the customer data dynamically determined by the analysis means" would necessarily lengthen the processing time to route traffic, which directly contravenes Mei's stated purpose of providing faster response times (Mei, col. 2:lines 11 – 12; lines 46 – 47). Thus, Mei teaches away from the applicant's recited embodiments as to its purpose as well.

In sum, Mei fails to teach, suggest or otherwise render obvious the embodiments recited by claim 1, teaches way as to its purpose as well as its process, would require changes to its principle of operation and impermissible hindsight if modified in a way to function as argued by the Office Action.

Claims 8, 10, 14, 18 and 20

Claims 8, 10, 14, 18 and 20, while independently patentable, each recites limitations that are similar to those described above with respect to claim 1. Therefore, for at least the reasons stated above with respect to claim 1, Applicant respectfully submits that claims 8, 10, 14, 18 and 20 are allowable over Mei, alone or in any combination, and are in condition for allowance.

Rejections under 35 U.S.C. § 103

In items 28 - 31, on pages 7 - 8, Claims 6 and 7 are rejected under 35 USC 103(a) as being unpatentable over Mei in view of U.S. Patent No. 6,801,949 to Bruck *et al.* (hereinafter "Bruck").

Claims 6 and 7

Mei's failures to teach, suggest or otherwise render obvious the embodiments recited by claim 1 were discussed previously. Since claims 6 and 7 depend from claim 1, Mei cannot render the embodiments of claims 6 and 7 unpatentable if Mei fails to teach, suggest or otherwise render obvious the embodiments recited by claim 1.

Even if the Office Action's argument that Bruck's load balancing server system could be combined with Mei's approach were even plausible, the asserted combination would still fail to teach, suggest or otherwise render obvious the recited "dynamically determines traffic routing rules at the content switch (CS) for routing network traffic based at least in part upon the at least one relationship in the customer data dynamically determined by the analysis means" of claim 1. While Bruck states that their load balancer is able to perform "dynamic load balancing" (Bruck, Abstract, lines 7 – 8), Bruck's system necessarily relies on statically defined routing table settings (Bruck, col. 18:lines 35 – 39), not dynamically derived relationships, to perform direction of traffic. Accordingly, any argued addition of such a mechanism for dynamically derived relationships to Bruck would change Bruck's principle of operation (see MPEP § 2143.01).

Further, Bruck's stated purpose is load balancing, which teaches away from the "traffic redirecting rules can be optimized dynamically according to the profile value of a user" (Specification, page 5:lines 6 – 7). Accordingly, Bruck teaches away from the embodiments recited by claim 1 as to its purpose as well as its process.

Because claims 6 and 7 depend from claim 1, the asserted combination Mei and Bruck, were it even possible, likewise fails to teach, suggest or otherwise render obvious the embodiment recited by claims 6 and 7 for at least these reasons.

Claims 10 and 16

In items 32 - 37, on pages 8 - 9, Claims 10 and 16 are rejected under 35 USC 103(a) as being unpatentable over Mei in view of U.S. Published Application No.: 2002/0040400 to Masters (hereinafter "Masters").

Mei's failures to teach, suggest or otherwise render obvious the embodiments recited by claims 1, 8, 10, 14, 18 and 20 were discussed previously. Since amended claims 10 and 16 now depend from claims 8 and 14, respectfully, Mei cannot render the embodiments of claims 10 and 16 unpatentable if Mei fails to teach, suggest or otherwise render obvious the embodiments recited by claims 8 and 14.

Even if the Office Action's argument that Masters's method for inserting and examining cookies could be combined with Mei's approach were even plausible, the asserted combination would still fail to teach, suggest or otherwise render obvious at least the recited "dynamically determining a service level based at least in part upon at least one relationship determined from data exchanged with the sender;" of claims 8 and 14.

Master's method for inserting and examining cookies is able to perform insertion and deletion of cookie information to persistently direct HTTP connections to the same destination (Masters, Abstract). Master's system, however, necessarily relies on a routing provided by a controller (Masters, FIG. 2A:128). The controller produces the routing based on load balancing schemes (Masters, para [0060]), not business logic, to perform routing of traffic. Accordingly, not only does Masters teach away as to its purpose as well as its result, any argued addition of such business logic analysis to Masters would change Masters's principle of operation (see MPEP § 2143.01).

Because claims 10 and 16 depend from claims 8 and 14, respectively, the asserted combination Mei and Masters, were it even possible, likewise fails to teach, suggest or otherwise render obvious the embodiment recited by claims 10 and 16 for at least these reasons.

Claims 11 – 13 and 17

In items 38 - 49, on pages 9 - 12, Claims 11, 12, 13 and 17 are rejected under 35 USC 103(a) as being unpatentable over Mei and Masters, and further in view of 'Official Notice'.

The failings of Mei and Masters to teach, suggest or otherwise render obvious the embodiments recited by claims 8 and 14 were discussed above. None of the items that the Office Action takes as 'Official Notice', even if taken as completely true, arguendo, could remedy the

previously discussed failings of Mei and Masters as to teach, suggest or otherwise render obvious the embodiments recited by claims 8 and 14. Accordingly, since claims 11, 12, 13 and 17 depend from these claims, the 'Official Notice' items, even if arguendo true, still would not teach, suggest or otherwise render obvious the embodiments recited by these claims.

Claims 2 – 7, 9, 11 – 13, 15 – 17 and 19

Claims 2 – 7, 9, 11 – 13, 15 – 17 and 19 are dependent upon Claims 1, 8, 10, 14 and 18 respectively, and thus include each and every feature of the corresponding independent claims. Each of Claims 2 – 7, 9, 11 – 13, 15 – 17 and 19 is therefore allowable for the reasons given above for the Claims 1, 8, 10, 14 and 18. In addition, each of Claims 2 – 7, 9, 11 – 13, 15 – 17 and 19 introduces one or more additional limitations that independently render it patentable.

Because Mei, Masters and Bruck, either alone or in any combination, fail to teach, suggest or otherwise render obvious recited claim limitations, teach away, and would be rendered inoperable or unsatisfactory for their intended purpose or changed as to their principle of operation and would require impermissible hindsight if attempted to be used in the manner argued by the Office Action, Applicant respectfully requests: (1) withdrawal of the rejection and (2) withdrawal of Mei, Masters and Bruck, from further consideration as a reference in the instant case.

Conclusion

The references cited by the Examiner but not relied upon have been reviewed, but are not believed to render the claims unpatentable, either singly or in combination.

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: 6/16/2005

By: _____

Paul A. Durdik
Reg. No. 37,819

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800 x227
Facsimile: (415) 362-2928